



31 MAR 2003

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In re Application of	:	
HOFFMANN, Olaf, et al.	:	
U.S. Application No.: 08/913,184	:	COMMUNICATION
PCT No.: PCT/DE96/00457	:	IN RESPONSE TO
International Filing Date: 05 March 1996	:	STATUS REQUEST
Priority Date: 07 March 1995	:	
Attorney's Docket No.: 6553 US	:	
For: COMMUNICATIONS AND MEASUREMENT	:	
APPARATUS	:	

This Communication is issued in response to applicants' "Petition Status Request" seeking the status of the "Renewed Petition To Revive An Unintentionally Abandoned Application Pursuant to 37 CFR 1.137(b)" filed by applicants on 12 February 2002.

On 21 June 2002, this Office mailed a decision granting applicant's "Renewed Petition To Revive An Unintentionally Abandoned Application Pursuant to 37 CFR 1.137(b)." Subsequent to the decision, on 01 October 2002, the DO/EO/US mailed a Notification Of Acceptance identifying 06 August 2001 as the 35 U.S.C. 371 date.

Courtesy copies of the previously mailed decision and Notification Of Acceptance are mailed herewith.

This application is being returned to Group Art Unit 2831.

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Enc.: - Decision mailed 21 June 2002
- Notification Of Acceptance mailed 01 October 2002



21 JUN 2002
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In re Application of
HOFFMANN, Olaf, et al.
U.S. Application No.: 08/913,184
PCT No.: PCT/DE96/00457
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DECISION ON RENEWED
PETITION

In a decision mailed by this Office on 20 November 2001, applicants' petition to revive was dismissed for failure to satisfy all the requirements of 37 CFR 1.137(b). Specifically, the decision found that applicant had failed to satisfy the requirement of 37 CFR 1.137(b)(3), that is, a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional."

On 12 February 2002, the USPTO received the "Renewed Petition To Revive An Unintentionally Abandoned Application Pursuant to 37 CFR 1.137(b)" considered herein. The Renewed Petition includes a certification of mailing under 37 CFR 1.8 dated 18 January 2002. Based on this certification, the Renewed Petition is considered a timely response to the 20 November 2001 decision.

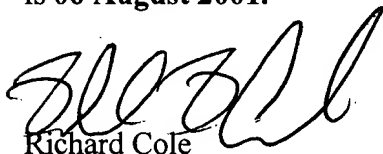
The 12 February 2002 submission includes the statement required by 37 CFR 1.137(b). Accordingly, all requirements for a grantable petition under 37 CFR 1.137(b) have now been submitted. The petition is **GRANTED**.

An additional issue argued by applicants is that the declaration received by this Office on 06 August 2001 was originally submitted as part of the "Response To Notice To File Missing Parts Of Application" filed 16 February 1999. The earlier decision noted that applicants' failure to itemize the declaration on the return postcard submitted as evidence of the earlier filing prevents the return postcard from providing evidence that the declaration was included with the 16 February 1999 submission (see MPEP section 503: "[t]he postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard."). Without the evidence of a stamped return postcard, it cannot be concluded that the declaration was included with the 16 February 1999 submission. Applicants argue here that the failure to check the declaration box on the return postcard resulted from counsel's standard practice when responding to a Notification Of Missing Requirements (attachments to such responses apparently

are not itemized), and that the USPTO should rely, not on the return postcard, but on the following: counsel's statement in the "Response To Notice To File Missing Parts Of Application" that a copy of the declaration was attached, the presence of the declaration in applicant's file copy of the 16 February 1999 Response, and the number of pages listed on the transmittal letter submitted on 16 February 1999. Applicants' arguments have been considered, but are found unconvincing. Counsel's statements in the Response are evidence only of an intent to attach the declaration to the Response; they are not evidence that the person who actually prepared and mailed the response did in fact include the declaration. The same is true of the presence of the complete submission (including declaration) in applicant's files and the number of pages on the transmittal letter. It is not uncommon for submissions to be made to the USPTO under cover letters which state that specific documents are attached, yet upon receipt, the purported attachments are found not to be present. It is for this reason that applicants are encouraged to itemize separately on return postcards all items submitted.

Accordingly, as stated in the previous decision, the declaration here is treated as having been filed on 06 August 2001. It is noted that the present application was published on 12 September 1996, making it prior art as of that date under 35 U.S.C. 102(a). Accordingly, the refusal of the USPTO to accord the application the requested 35 U.S.C. 102(e) date of 16 February 1999 does not prejudice applicants.

This application is being forwarded to the National Stage Processing Branch of the PCT Operations Division for further processing in accord with this decision. The 35 U.S.C. 371 date is **06 August 2001**.



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U.S. APPLICATION NUMBER NO.	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
08/913,184	Olaf Hoffmann	67190/954050

INTERNATIONAL APPLICATION NO.
PCT/DE96/00457

I.A. FILING DATE	PRIORITY DATE
03/05/1996	

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CONFIRMATION NO. 5454

371 ACCEPTANCE LETTER



OC000000008877409

Date Mailed: 10/01/2002

NOTICE OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C 371 AND 37 CFR 1.494 OR 1.495

The applicant is hereby advised that the United States Patent and Trademark Office in its capacity as an Elected Office (37 CFR 1.495), has determined that the above identified international application has met the requirements of 35 U.S.C. 371, and is ACCEPTED for national patentability examination in the United States Patent and Trademark Office.

The United States Application Number assigned to the application is shown above and the relevant dates are:

<u>08/06/2001</u>	<u>08/06/2001</u>
DATE OF RECEIPT OF 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) REQUIREMENTS	DATE OF RECEIPT OF ALL 35 U.S.C. REQUIREMENTS

A Filing Receipt (PTO-103X) will be issued for the present application in due course. **THE DATE APPEARING ON THE FILING RECEIPT AS THE " FILING DATE" IS THE DATE ON WHICH THE LAST OF THE 35 U.S.C. 371 REQUIREMENTS HAS BEEN RECEIVED IN THE OFFICE. THIS DATE IS SHOWN ABOVE.** *The filing date of the above identified application is the international filing date of the international application (Article 11(2) and 35 U.S.C. 363).* Once the Filing Receipt has been received, send all correspondence to the Group Art Unit designated thereon.

The following items have been received:

- U.S. Basic National Fee
- Copy of references cited in ISR
- Copy of the International Application
- Copy of the International Search Report
- Oath or Declaration
- Preliminary Amendments
- Request for Immediate Examination
- Substitute Specification

Applicant is reminded that any communications to the United States Patent and Trademark Office must be mailed to the address given in the heading and include the U.S. application no. shown above (37 CFR 1.5)

ANITA D JOHNSON

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PART 3 - OFFICE COPY

FORM PCT/DO/EO/903 (371 Acceptance Notice)